Supreme Court, U.S.
FILED
NO DEC 10 1985
JOSEPH F. SPANIOL, JR.
CLERK

TERM, 1985 **85-996**

IN THE SUPREME COURT OF THE UNITED STATES

STEWART HILBMANN,

Petitioner

VS.

UNITED STATES OF AMERICA,

Respondent

On Petition For A Writ of Certiorari to
the United States Court of Appeals
For the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

A. CHARLES PERUTO, ESQUIRE

BURTON A. ROSE, ESQUIRE
COUNSEL FOR PETITIONER

PERUTO, RYAN & VITULLO
Washington West Building
N.E.C. 8th & Locust Sts.
Philadelphia, Pa. 19106
(215) 925-5800

35pp

QUESTION PRESENTED

I. DID THE COURT OF APPEALS ERR IN CONSTRUING RULE 404(b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE TO ALLOW INTRODUCTION OF EVIDENCE OF OTHER ACTS ATTRIBUTED TO APPELLANT AS EVIDENCE OF A COMMON SCHEME WHERE THE PRIOR ACTS WERE NON-CRIMINAL AND TO ALLOW INTRODUCTION OF EVIDENCE UNDER SAID PROVISION FOR THE PURPOSE OF CORROBORATION OF A GOVERNMENT WITNESS?

TABLE OF CONTENTS PAGE

QUESTION PRESENTED..... 1

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT..... 3

JURISDICTION..... 4

RULE OF CRIMINAL PROCEDURE INVOLVED..... 4

STATEMENT OF THE CASE..... 5

REASONS FOR GRANTING THE WRIT OF CERTIORARI..... 7

CONCLUSION..... 10

CERTIFICATE OF SERVICE..... 11

EXHIBIT "A" - OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

EXHIBIT "B" - OPINION OF THE UNITED STATES DISTRICT COURT

IN THE SUPREME COURT OF THE UNITED STATES

STEWART HILBMANN,

Petitioner

VS.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STEWART HILBMANN, the Petitioner above-named, respectfully prays this Honorable Court issue a Writ of Certiorari to review the decision of the United States Court of Appeals for the Third Circuit entered in this matter on October 31, 1985. See Exhibit "B" attached.

JURISDICTION

This Court has proper jurisdiction under 28 U.S.C. Section 1254 to review Judgments of the United States Court of Appeals for the Third Circuit.

RULE OF CRIMINAL PROCEDURE INVOLVED

At issue in this case is the interpretation of Rule 404(b) of the Federal Rules of Criminal Procedure, which states the following:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

STATEMENT OF THE CASE

The Petitioner in this matter is Stewart Hilbmann who was charged in a Bill of Indictment in the United States District Court for the Eastern District of Pennsylvania, No. 84-00374-01, with conspiracy to make false statements to an agency of the United States sur 18 U.S.C. Section 371.

In his direct appeal to the United States Court of Appeals for the Third Circuit, the Petitioner raised an issue concerning the introduction of evidence against him at trial by the United States pursuant to Rule 404(b) of the Federal Rules of Evidence.

The Petitioner was charged with having arranged a sham marriage in order to obtain permanent resident status for one Erlinda Amatos. The person who purportedly conspired with the Petitioner in this regard was one John Herms. The government's theory was that false statements were made to officials of the Immigration and Naturalization Service concerning the true nature of the Herms-Amatos marriage in order to obtain

approval by the I.N.S. of Ms. Amatos as a permanent resident in this country. The government further alleged that the Petitioner received a fee from Ms. Amatos, shared with Mr. Herms, in exchange for his coordination of the necessary procedural arrangements.

The Petitioner was convicted of these charges and sentenced to a period of six months imprisonment and 18 months probation by the District Court on January 17, 1985.

A timely appeal was taken to the United States Court of Appeals for the Third Circuit, which issued a Memorandum Opinion annexed hereto as Exhibit "A" which affirmed the Judgment of Sentence on October 31, 1985. Exhibit "B" is the Opinion of the District Court.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE COURT OF APPEALS ERRED IN ALLOWING THE GOVERNMENT TO INTRODUCE EVIDENCE AGAINST PETITIONER UNDER RULE 404(b) OF THE FEDERAL RULES OF EVIDENCE CONCERNING PETITIONER'S INVOLVEMENT IN A SECOND, NON-SHAM MARRIAGE IN ORDER TO CORROBORATE A GOVERNMENT WITNESS AND/OR TO ESTABLISH A COMMON SCHEME.

At the trial of this case, the government was permitted to introduce evidence concerning another, unrelated marriage between Teresita Rabago and Ferdinand Kalugdan, as well as evidence that the Appellant played a role in coordinating that marriage. However, the record establishes that there was nothing about the Rabago-Kalugdan marriage which was improper. The admission of this other incident into the trial caused the Appellant to testify in defense of both matters.

In disposing of this contention on direct appeal, the Court of Appeals held that although the prior marriage was neither a sham nor a crime of any sort, it was admissible under Rule 404(b) as proof of a common plan or scheme, citing United States v. Krohn, 560 F.2d 293 (7th Circuit, 1977). But see United States vs. Sliker, 751 F.2d 477,

485 (2nd Civ., 1985) (evidence of prior acts offered to show a common scheme must be so similar in kind that "the characteristics relied upon are sufficiently idiosyncratic" as to warrant a "fair inference of a pattern's existence.")

The Court of Appeals also ruled that evidence of the prior marriage was admissible for the purpose of corroborating a government witness who had testified that Appellant told the witness that Appellant had been involved in the past in such fraudulent marriages without getting into any "trouble". The Court of Appeals held that the prior marriage corroborated such testimony notwithstanding Appellant's contention that a non-sham marriage would not be corroborative to establish that Appellant knew how to deal with such matters without getting into "trouble".

The Court of Appeals cited United States v. Williams, 577 F.2d 188 (2nd Circuit, 1978) as support for the principle that corroboration can be a proper purpose for the admission of evidence under Rule 404(b).

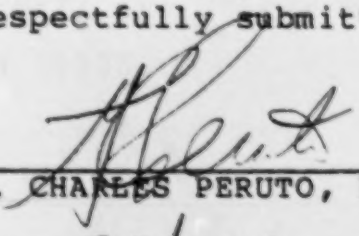
Your Petitioner respectfully submits that this Honorable Court has never ruled that Rule 404(b) reaches as broadly as it has been interpreted in these two situations by the lower Court. The danger of such a broad interpretation is evident in this case, where the jury was misled by all of the circumstances to believe that the prior incident was probably another fraudulent or sham marriage, raising a suspicion that the Petitioner was involved in a pattern of improper behavior in this regard, all of which was to his undue prejudice.

The Petitioner respectfully submits that this Court should vacate the decision of the United States Court of Appeals and rule that Rule 404(b) does not permit the introduction of evidence under these circumstances, either for the purpose of corroboration (a purpose not stated in the Rule), or to establish a prior scheme where the previous conduct does not establish a violation of federal criminal law.

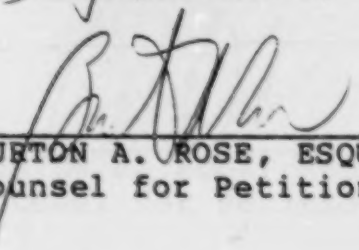
CONCLUSION

For the foregoing reasons, the Petitioner respectfully prays this Honorable Court vacate the decision of the United States Court of Appeals for the Third Circuit in this matter and grant a new trial to the Petitioner.

Respectfully submitted,



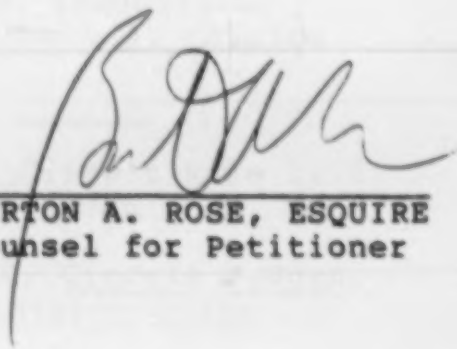
A. CHARLES PERUTO, ESQUIRE



BURTON A. ROSE, ESQUIRE
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, BURTON A. ROSE, Esquire, being duly sworn according to law, depose and say that a true and correct copy of the within Petition for a Writ of Certiorari has been served upon the Office of the Solicitor General of the United States, Department of Justice, Washington, D.C. 20543 and James A.A. Pabaru, Esquire, Assistant United States Attorney, 3310 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106.



BURTON A. ROSE, ESQUIRE
Counsel for Petitioner

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 85-1053

UNITED STATES OF AMERICA

VS.

HILBMANN, STEWART

Appellant

On Appeal from the United States District Court for the Eastern District of Pennsylvania
D.C. Criminal No. 84-00374-01
District Judge: Anthony J. Scirica

Submitted Under Third Circuit Rule 12(6)
October 18, 1985

Before: ADAMS, HUNTER, Circuit Judges, and FISHER,* District Judge

Opinion filed October 31, 1985

---

*Honorable Clarkson S. Fisher, United States District Judge for the District of New Jersey sitting by designation.

EXHIBIT "A"

MEMORANDUM OPINION

HUNTER, Circuit Judge:

1. Stewart Hilbmann appeals from a judgment of conviction and sentence in the United States District Court for the Eastern District of Pennsylvania for conspiracy to make false statements to an agency of the United States Government in violation of 18 U.S.C. Section 371. In his appeal, Hilbmann raises two issues, which concern the instroduction of evidence under Federal Rule of Evidence 404(b) and the prosecutor's cross-examination of him at trial.

2. In August 1983, Hilbmann, a federal protection officer assigned to guard the United States Courthouse in Philadelphia, approached his colleague, John Herms, and inquired whether Herms was interested in marrying a Filipino national for $1,000.00. Hilbmann explained the reason for the marriage was to enable the woman, Erlinda Amatos, to obtain permanent resident status in the United States. After meeting Amatos, Herms agreed to the marriage with the understanding the he would not

have to consummate the marriage or live with Amatos. Hilbmann handled all of the arrangements for the marriage, including obtaining the marriage license, setting up the blood tests, and supplying the rings. After the marriage, Hilbmann requested assistance from officials of the Immigration and Naturalization Service ("INS") for establishing the permanent resident status of Amatos and arranged expedited interview procedures for Herms and Amatos. Hilbmann accompanied them to the INS office, where, in accordance with the agreed upon plan, Herms and Amatos made material false statements and omissions concerning the purpose of the marriage and their living arrangements. As a result of this conspiracy, Herms received $500 and Amatos obtained permanent resident alien status.

3. In arguing for the reversal of his conviction and sentence, Hilbmann first contends that the trial court abused its discretion in permitting the government to introduce evidence under Federal Rule of Evidence 404(b) of Hilbmann's involvement in the marriage of Teresita Rabago and

Ferdinand Kalugdan, another marriage that enabled a Filipino citizen to obtain permanent resident status. Rule 404(b) provides that:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

As recognized in Government of the Virgin Islands v. Joseph, 685 F.2d 857 (3d Cir. 1982), Rule 404(b) requires the trial judge to determine both whether evidence falls within the scope of the Rule and whether the danger of unfair prejudice outweighs the probative value of the evidence. Id. at 860-61. We conclude that the trial judge, who undertook both of these inquires, admitted evidence of the Rabago-Kalugdan marriage.

4. The government advanced two theories for the introduction of the evidence of the Rabago-Kalugdan marriage: (1) as evidence of a common plan or scheme; and (2) as evidence corroborating the testimony of John Herms, who had testified that

Hilbmann had responded to Herms' apprehension about the conspiracy by stating that he had "done this three times before." Although the government introduced evidence to show that Rabago and Kalugdan began to live together after the marriage, the Herms' involvement in the Rabago- Kalugdan marriage is sufficiently similar to his involvement in the Herms-Amatos marriage to constitute "acts to show proof of plan" under Rule 404(b). For example, an INS employee testified that Hilbmann approached him to obtain applications for permanent resident status, notarized the applications, and monitored the progress of the applications for individuals involved in both marriages. In addition, both marriages took place at the same location and around the time when the visitor's visa of one of the participants was about to expire. The fact that the Rabago-Kalugdan marriage may not have been a sham and that Hilbmann's involvement with the marriage was therefore not a crime does not affect the admissibility of evidence of the marriage as proof of a common plan or

scheme. See United States v. Krohn, 560 F.2d 293, 296 (7th Cir.) (evidenece of acts admitted under Rule 404(b) does not have to be evidence of criminal acts), cert. denied, 434 U.S. 895 (1977).

5. The government's second theory also presented a suitable basis upon which the district court admitted evidence of the Rabago-Kalugdan marriage. Although corroboration is not listed in Rule 404(b) as proper purpose for admitting evidence under the Rule, we have determined in earlier cases that the purposes enumerated in the Rule are not exclusive. Government of the Virgin Islands v. Carino, 631 F.2d 226, 229 (3d Cir. 1980); United States v. Long, 574 F.2d 761, 766 (3d Cir.), cert. denied, 439 U.S. 985 (1978). Moreover, as recognized by the United States Court of Appeals for the Second Circuit, corroboration can be a proper purpose for the admission of evidence under Rule 404(b). See, e.g., United States v. Williams, 577 F.2d 188, 192 (2d Cir.), cert. denied, 439 U.S. 868 (1978). Thus, in

this case, the evidence of the Rabago-Kalugdan marriage was admissible as directly corroborative of the testimony regarding Hilbmann's attempt to communicate to Herms that Hilbmann was familiar with the application procedures and that Herms would not encounter any trouble as a result of his participation in the procedures.

6. As demonstrated above, the evidence of the Rabago-Kalugdan marriage was highly probative as corroborative evidence and evidence of a common plan or scheme. On the other hand, much of the prejudice that may have resulted from the evidence was undercut at trial by the government's evidence that the Rabago-Kalugdan marriage was not a sham and the trial court's cautionary instruction. Accordingly, the court correctly determined that appellant was not unfairly prejudiced by the introduction of the evidence.

7. The second issue raised by appellant concerns a question that the prosecutor asked him on cross-examination. During the cross-examination, appellant had testified that Herms

gave him Amatos' passport, which appellant later presented to an INS employee. Later in the cross-examination, the prosecutor, apparently for the purpose of impeaching appellant, asked him the following question: "Well, did you know, sir, that when Erlinda Amatos was arrested in California about a month ago she had her passport and her passport was confiscated by the federal government?" Appellant contends that in asking this question, the prosecutor testified to a fact not in evidence and thereby deprived him of a fair trial.

8. Appellant's argument lacks merit. A cross-examiner does not have a duty in every case to introduce evidence supporting the factual predicate of every question asked. United States v. Harris, 542 F.2d 1283, 1306-07 (7th Cir. 1976). The imposition of a duty to introduce supporting evidence for each question asked during cross-examination would contradict the traditional rule that courts may permit cross-examination on a collateral matter, such as the question at issue

here, but should prohibit introduction of extrinsic evidence on the matter. See id. at 1307. Furthermore, since the appellant's counsel failed to object to the question at trial, our review is limited under Federal Rule of Criminal Procedure 52(b) to whether the question constituted plain error affecting substantial rights. Because the trial court instructed the jury that the statements and arguments of counsel were not evidence, the question lacked the prejudicial effect required to meet the Rule 52(b) standard.

9. For the foregoing reasons, the judgment of the district court is affirmed.

TO THE CLERK:

Please file the foregoing opinion.

JAMES HUNTER, III, Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

VS. : CRIMINAL NO. 84-374-01

STEWART HILBMANN :

MEMORANDUM

SCIRICA, J. January 16, 1985

Defendant, Stewart Hilbmann has filed a motion for new trial after his conviction of conspiracy by trial by jury on November 7, 1984.

Facts:

In August of 1983, Stewart Hilbmann, a federal protective officer in the employ of the United States Government and stationed at the United States Courthouse in Philadelphia, approached a colleague officer, Albert Jung, and inquired whether he was interested in marrying a

EXHIBIT "B"

Filipino woman alien for $1,000. Hilbmann explained the reason for the marriage was to allow the woman to obtain permanent resident status in the United States. The defendant informed Jung he would not have to consummate the marriage. Officer Jung declined the offer and Hilbmann approached a second colleague, federal protective officer John Herms, with substantially the same scheme.

After meeting the woman, Erlinda Amatos, Herms agreed to the marriage with the understanding that he would receive $1,000 and would not have to live with her.

In late August 1983, Hilbmann presented a typed agreement to Herms which had been signed by Amatos, which outlined the details of the marriage. In September 1983, Herms and Amatos pursuant to Hilbmann's plans were married in Yerkes, Pennsylvania. All of the arrangements surrounding the marriage, including obtaining the marriage license, setting up the blood tests, and supplying the rings, were handled by Hilbmann.

In furtherance of the plan, Hilbmann

approached employees of the Immigration and Naturalization Service (INS), and requested assistance from the INS for permanent resident status for Amatos. Hilbmann arranged for Herms and Amatos to bypass the normal interview procedures of the INS and accompanied Herms and Amatos to the INS office. At the interview, in accordance with the agreed upon plan, both Herms and Amatos informed the INS that they were living together at Herms' residence in Philadelphia. The forms submitted to the INS by Herms and Amatos indicated that they were residing at Herms' home which, in fact, was not true. Neither Herms or Amatos disclosed to the INS that the sole purpose of this marriage was to gain permanent resident status for Mrs. Amatos.

These fraudulent statements were in fact critical and material to the INS determination of whether to grant Amatos the green card signifying resident status.

As a result of this conspiracy, Herms received $500 for participating in the sham marriage to Erlinda Amatos, who in turn obtained her permanent resident alien status.

The Defendant was charged and convicted of conspiracy to make false statements to an agency of the United States Government in violation of 18 U.S.C. Section 371.

The Defendant contends that the Court erred in its jury instructions on conspiracy.

The court instructed the jury that:

> The existence of a conspiracy may be proved from circumstantial evidence alone. . .
>
> The evidence in this case need not show that the members entered into any formal or expressed agreement or that they directly by words spoken or in writing stated between themselves what their object or purpose the means by which the object or purpose was to be accomplished.

The Defendant claims that these instructions enabled the jury to convict based on a theory of conspiracy separate and apart from the government's case. The Defendant contends that the government's proof was based solely on the direct testimony of

co-conspirator John Herms and on the written agreement between Herms and Amatos. The Defendant therefore claims it was error to charge they jury on circumstantial evidence.

There is ample evidence on the record to substantiate the court's instruction to the jury on this issue. The Defendant's objection overlooks the fact that the government, in fact, had presented substantial circumstantial evidence in its case.

Specifically, the government's evidence included Hilbmann's extensive contacts with the INS such as his arrangements for the interview, his monitoring of the application and his escorting Herms and Amatos to the interview. The evidence also described Hilbmann's arrangement of the marriage in connection with obtaining the marriage license, the blood test, supplying the wedding bands and arranging the ceremony.

There was a written agreement between Herms and Amatos. There were also however considerable actions by Hilbmann, Herms and Amatos in further-

ance of the conspiracy that was never agreed to in writing.

The jury, acting as fact finder, may have decided to disbelieve in whole or in part, Herms' testimony about the express agreement with Hilbmann oor the written agreement with Amatos, and still have come to the conclusion based on circumstantial evidence, that Hilbmann was a co- conspirator. "Credibility determinations are for the jury." United States v. Jannotti, 673 F.2d 578 (3d Cir. 1982), cert. denied, 102 S.Ct. 2906, 457 U.S. 1106, 73 L.Ed. 2d 1315.

The Defendant also contends that these instructions on circumstantial evidence constituted a variance or constructive amendment of the indictment, and cites Stirone v. United States, 361 U.S. 212 (1959). None of the evidence was at variance with the indictment and Defendant's argument is without merit.

The Defendant also maintains the following instructions were in error:

> One who willfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.
>
> A defendant once found to be a member of a conspiracy -- whether his level of participation -- may be criminally responsible for acts he is unaware of by persons whose existence is unknown to him, if done as part of a conspiratorial design.

The government contended that Hilbmann conspired with Herms and Amatos to defraud the INS. Herms testified that Hilbmann solicited him to participate in the scheme, yet the jury could have chosen to disbelieve Herms in whole or in part that Hilbmann originated the conspiracy, but still found from the evidence that he took part in the conspiracy.

In conclusion, there was sufficient circumstantial evidence placed before the jury upon which they could have based a conviction. Upon review, we find no error in our instructions on the issue of circumstantial evidence on the conspiracy charge.

The next issue is whether the court erred in

admitting evidence in connection with the Kalugdan-Rabago marriage.

According to the government's witnesses, the Defendant asserted that he had arranged three fraudulent marriages in the past. The prior marriages took place in Yerkes, Pennsylvania, involved Filipino nationals holding visas and were based on the desire to gain a green card.

The Defendant argues that this evidence was not admissible under Rule 404(B). Rule 404(B) of the Federal Rules of Evidence states in part, "... evidence of other... acts may be admissible to show proof of motive, ... intent, plan prep- aration, knowledge, ... or absence of mistake."

The evidence of the Kalugdan-Rabago marriage fits into the definition of F.R.E. 404(B), as evidence of "other acts to show proof of plan." Hilbmann followed the same modus operandi in both the Amatos and Kalugdan marriages. In both marriages, Hilbmann approached Philip Penston of INS to obtain an application for a green card; he notarized the applications, filed the papers and

monitored the progress of the applications. The sites of the weddings and blood tests were identical. These events point to a common plan and therefore are admissible under Rule 404(B) of the Federal Rules of Evidence.[1]

Furthermore, this evidence was used to corroborate the testimony of the government's key witness, John Herms. Herms testified that Defendant had asserted that he had "done this three times before." In United States v. Williams, 577 F.2d 188, (2d Cir. 1978), the District Court in New York upheld the admission of evidence of prior bank robbery convictions to corroborate the testimony of the co-defendant. Moreover, in United States v. Long, 574 F.2d 761, 766 (3d Cir. 1978), the court held that the fundamental purposes of the rule with respect to admissibility of evidence of other crimes are not

---

[1] In United States v. Krohn, 560 F.2d 293 (7th Cir. 1970), the court held that acts admitted under Rule 404(B) do not have to be criminal acts, they may be just acts to show a common scheme or plan.

exclusive. Certain acts are admissible to corroborate. Government of Virgin Islands v. Carino, 631 F.2d 226 (3d Cir. 1980).

The Defendant also contends that based on Federal Rule of Evidence 403, the probative value of the proferred evidence is outweighed by the unfair prejudice to Defendant.

In the Kalugdan marriage, Hilbmann conversed with the INS and used his notary public seal on marriage and citizenship applications. The sites of the wedding and blood test were the same for both marriages. This amalgamation of evidence had probative value, outweighed any prejudice to the Defendant, and served to corroborate the testimony of John Herms.

The Defendant also claims that the admission of evidence regarding the Kalugdan-Rabago marriage was procedurally flawed in that there was no balance analysis done on the record, as required by United States v. Lebovitz, 669 F.2d 899, 901 (1981), cret. denied, 102 S.Ct. 1979 (1982).

This testimony was allowed after a lengthy

side bar conference between counsel and the court where counsel argued probative value and prejudicial value. After due consideration, the court, in the exercise of its discretion, ruled the evidence admissible. At the same time, the court sustained Defendant's hearsay objection to the evidence.

The final issue is whether the Defendant was deprived of a fair trial where the United States Attorney allegedly made improper reference to the Defendant's prior bad acts in his closing argument. The United States Attorney stated that the Defendant had previously been found to have defrauded the government. To support his contention that the government was out to get him, Hilbmann testified that he had been suspended for sixty (60) days for various violations of departmental regulations.

The standard as to whether a Defendant has been deprived of a fair trial requires "finding the improprieties were so gross as to probably prejudice the defendant." United States v.

Homer, 545 F.2d 864 (3d Cir. 1976). While the government's remarks may have been imprecise, they simply fail to meet to the threshold standard set forth in the Homer case infra, as they were not obviously prejudicial.

More importantly, however, the Defendant never objected to this comment at trial. The court, therefore, had no opportunity to give any curative instructions to the jury regarding the alleged improper statements. In United States v. Carter, 720 F.2d 941 (7th Cir. 1983), the court stated that where there is no objection made at trial to the prosecution's argument, review is limited to determining whether remarks are so prejudicial as to amount to plain error.

The Government's remarks in the instant case were based upon evidence made at trial and were, in fact, based primarily upon Stewart Hilbmann's own testimony. It is therefore our opinion that the remarks at issue do not constitute plain error.

For all of the foregoing reasons, the Defendant's Motion for New Trial is hereby denied.

Anthony J. Scirica, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

VS. : CRIMINAL NO. 84-374-01

STEWART HILBMANN :

O R D E R

AND NOW, this 16th day of January, 1985, upon consideration of the Defendant's Motion for New Trial and the Government's response thereto, it is hereby ORDERED that the Defendant's motion is DENIED for the reasons set forth in the accompanying Memorandum.

ANTHONY J. SCIRICA, J.